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UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF WASHINGTON

TINA COLEMAN,

Plaintiff,

vs.

DANIEL N. GORDON, P.C., AND  
ASSET ACCEPTANCE, LLC,

Defendants.

Case No. CV-10-428-EFS

DEFENDANT ASSET  
ACCEPTANCE, LLC'S SUR  
REPLY TO PLAINTIFF'S  
RESPONSE TO ASSET'S  
JOINDER IN DANIEL N.  
GORDON, PC'S MOTION FOR  
SUMMARY JUDGMENT

Defendant Asset Acceptance, LLC, by and through its attorney Daniel N. Gordon, submits this sur reply memorandum to Plaintiff's Response to Defendant Asset Acceptance, LLC's Joinder in Daniel N. Gordon, P.C.'s Motion for Summary Judgment.

**I. IN WASHINGTON STATE, A GARNISHMENT ACTION IS NOT A  
LEGAL ACTION AGAINST A CONSUMER.**

Section 1692i provides for venue, in relevant part, as follows:

"(a) Any debt collector who brings any legal action on a debt  
**against a consumer** shall . . .

(2) . . . bring such action only in the judicial district or a similar  
legal entity –

(A) in which such consumer has signed the contract sued  
upon; or

1 (B) in which such consumer resides at the commencement of  
2 the action. [Emphasis supplied.]

3 Statutory interpretation begins with the language of the statute. When the  
4 plain meaning of a statutory provision is unambiguous, that meaning is  
5 controlling. *Children's Hospital and Health Center v. Belshe*, 188 F 3d 1090,  
6 1096 (C.A. 9<sup>th</sup> Cir. 1999).

7 The venue provision of the FDCPA applies only to a legal action on a debt  
8 "**against a consumer** ." A garnishment action in Washington must issue from  
9 the court in which the judgment was entered. RCW 6.27.020(1); *Gamble v.*  
10 *Superior Court for King County*, 190 Wn. 127, 132, 66 P. 2d 1135 (1937). The  
11 garnishment is not an action against a consumer. Rather, the writ initiates a  
12 distinct, but ancillary, action **against the garnishee** for the purpose of enforcing  
13 the judgment against the judgment debtor. RCW 6.27.020(1); *Watkinson v.*  
14 *Peterson Enterprises*, 137 Wn. 2d 637, 638-39, 973 P. 2d 1037 (1999). The  
15 garnishee, but not the debtor, is entitled to move for a change of venue. *Gamble*  
16 *v. Superior Court for King County*, 190 Wn. at 132. The debtor must be given  
17 notice in order to provide him/her an opportunity to claim exemptions, but not to  
18 contest the debt itself. RCW 6.27.160, 6.27.210.

19 Plaintiff's reliance on *Fox v. CitiCorp Credit Sers., Inc.*, 15 F3d 1507 (9<sup>th</sup>  
20 Cir. 1994) is misplaced. That case, based on Arizona law, permitted a writ of  
21 garnishment to be filed in any county. In Washington, a writ of garnishment can  
22 be issued only out of the court in which the judgment was entered. RCW  
23 6.27.020(1). No other court has jurisdiction to issue such a writ. Moreover, the  
24 garnishment action was not considered to be an against the garnishee.

25 In a case similar to the case at bar, the court in *Pickens v. Collection*  
26 *Services of Athens, Inc.*, 165 F. Supp. 2d 1376 (D.C. M.D. Ga., 2001) ruled  
27 against the plaintiff. Georgia's garnishment statute required that a writ of  
28 garnishment against a corporation be issued in the county in which the



1 corporation was located and not the debtor's county of residence. In finding for  
2 the defendant that the writ of garnishment was properly issued, the court wrote:

3  
4 "The Official Code of Georgia sets forth specific procedures that  
5 must be followed in a garnishment proceeding. [Citation omitted.] The  
6 Court notes that under Georgia garnishment law, 'a garnishment  
7 proceeding is an action between the plaintiff [judgment creditor] and  
8 the garnishee.' [Citation omitted.] The judgment debtor may become  
9 a party to the proceeding by filing a traverse to the plaintiff's affidavit;  
however, the judgment debtor is not a party to the garnishment.  
[Citation omitted.] Thus, as required by the Georgia code, the  
garnishment action in this case was an action by the judgment  
creditor against the garnishee, and not against the consumer.  
Accordingly, the Court does not believe that the garnishment action  
violates the FDCPA provision.

10 'In further support of its position, the Court notes that the  
11 Defendants were following Georgia venue law, which provides that  
12 venue in a garnishment proceeding is 'in the county in which is  
located the corporate office or place of business where the employee  
who is the defendant in the main action is employed. . . .'"

13 The plaintiff also states that the FDCPA preempts state law and cites  
14 several cases for that proposition. However, those cases do not help plaintiff in  
15 the case at bar.

16 *Lensch v. Armada Corporation*, 2011 U.S. Dist. LEXIS 62565 (W.D. Wash.  
17 2011) involved defendant sending to plaintiff a statutory Notice of Dishonor  
18 ("NOD") as part of its collection effort. The NOD advised defendant that if she did  
19 not pay the check, it would be turned over to law enforcement authorities. In fact,  
20 there was no legal basis to do that because the statute of limitations on the  
21 prosecuting the NSF check had run out; thus, defendant was threatening to take  
22 an action it had no legal right to take. Thus, even though there is a state statute  
23 authorizing the sending of a NOD, the court held that under the factual  
24 circumstances of that case, the FDCPA preempted Washington state law.

25 In *Flores v. Quick Collect, Inc.*, 2007 U.S. Dis. LEXIS 69542 (D. Or. 2007)  
26 the plaintiff held a judgment debtor examination and issued a writ of garnishment  
27 out of the Multnomah County Circuit Court. Plaintiff alleged that she lived in  
28



1 Washington County and that Multnomah County was an improper venue.  
2 Oregon, unlike Washington which has no procedure to transfer a case post  
3 judgment, has a statutory procedure for transferring a case to another county's  
4 Circuit Court after the entry of judgment. Under those circumstances the court  
5 ruled that the defendant violated the FDCPA.

6 Finally, *Martinez v. Albuquerque Collection Svcs., Inc.*, 867 F. Supp. 1495  
7 (D. N. M. 1994) held that even though New Mexico law permitted filing a collection  
8 law suit in a county other than the one in which the plaintiff resided, that provision  
9 was preempted by the FDCPA's requirement that the suit be brought in the  
10 judicial district in which the defendant lived or in which the contract was signed.

11 In the case at bar, there is no dispute that the original collection law suit  
12 was filed in the judicial district, i.e., Snohomish County, where the defendants  
13 resided at the time. However, unlike the Oregon case cited by plaintiff,  
14 Washington law requires that all garnishments and post judgment remedies be  
15 issued out of the court in which the judgment was rendered. Moreover, under  
16 Washington law, the garnishment proceeding is a suit against the garnishee, not  
17 the judgment debtor.

18 Under these circumstances, the court in *Pickens v. Collection Services of*  
19 *Athens, Inc.*, *supra*, at 165 F. Supp. 2d 1380 and 1381 stated:

20 "The court recognizes the concern that not applying the  
21 FDCPA's venue provision in collection proceedings against parties  
22 other than the debtor could circumvent the purpose of the FDCPA as  
23 the debtor is ultimately affected by these actions. The court notes,  
24 however, that in enforcement actions such as the one at issue in this  
25 case, the debtor has already had the chance to defend the debt  
26 actions such as the one at issue in this case, the debtor has already  
27 had the chance to defend the debt action in the original proceeding  
28 in which the judgment was obtained. The original proceeding should  
have complied with the FDCPA and been brought against the debtor  
in one of the jurisdictions provided for under the venue provision. The  
court believes that the Federal Trade Commission's commentary on  
this issue supports the Court's analysis. The FTC considered the  
venue provision and commented that 'if a judgment is obtained in a  
forum that satisfies the requirements of the section, it may be  
enforced in another jurisdiction because the consumer previously has



1 had the opportunity to defend the action in a convenient forum.' 53  
2 Fed. Reg. 50,097, 50,109 (1988). Although the FTC commentary is  
3 non-binding, the Eleventh Circuit has noted that in interpreting the  
FDCPA, the commentary should be given considerable weight.  
[Citations omitted.]"

4 Finally, the Georgia court considered the 9<sup>th</sup> Circuit's decision in the *Fox*  
5 case, *supra*, and agreed that the decision does stand for the proposition that legal  
6 actions involving the enforcement of a previously adjudicated right are  
7 encompassed within section 1692i. However, the Georgia court pointed out that  
8 the *Fox* decision did not address the "**against the consumer**" language in the  
9 venue provision, which was the language upon which the Georgia court based its  
10 decision. The court pointed out that the Ninth Circuit "merely addressed whether  
11 or not 'an action in enforcement of a previously-obtained judgment' falls within the  
12 venue provision, and did not consider any arguments regarding the nature of a  
13 garnishment action or the actual garnishment process in Arizona." Thus, the  
14 Georgia court did not find the *Fox* reasoning persuasive.

15 If the court were to accept plaintiff's reasoning on this issue, it would mean  
16 in the absence of the Washington legislature enacting a statute that provides for  
17 the transfer of a case to a different county after judgment, that a judgment debtor  
18 would merely have to move over the county line after the entry of a judgment  
19 against him/her to make collection of the judgment impossible. Such a result  
20 would be absurd and would infringe on the rights of judgment creditors in this  
21 state to collect what is due to them.

22 Respectfully submitted

23 DANIEL N. GORDON, P.C.

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25 Daniel N. Gordon, WBSB #32186  
26 Of Attorneys for Asset Acceptance, LLC  
27  
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Certificate of Service

I hereby certify that on November 10, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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